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Under Secretary of Commerce for Intellectual Property and
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Paper No. 34

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

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MAY 09 2003

In re Application of
Daniel K. Podolsky
Application No. 09/313,434
Filed: May 17, 1999
Attorney Docket No. 50206/432001

OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition filed February 10, 2003, requesting withdrawal of the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED** as moot.

Unfortunately, the petition did not reach the appropriate official for decision within sufficient time to avert issuance of the application into a patent. Petitioner's attention is directed to 37 CFR 1.313(d), which states:


A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue**. Withdrawal of an application from issue after payment of the issue fee may not be effective to avoid publication of application information.

The information disclosure statement (IDS) has been placed in the file of the above-identified application without further consideration. See 37 CFR 1.97(I).

The request for continued examination (RCE) filed concurrently with the petition is improper in view of the issuance of the instant application into a patent on May 17, 1999. Since the RCE (unlike a CPA) is not any type of new application filing, the Office cannot grant a petition to convert an untimely RCE under 37 CFR 1.114 to a continuing application under 37 CFR 1.53(b).

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

The patented file is being forwarded to Files Repository.

A handwritten signature in black ink, reading "Karen Creasy". The signature is written in a cursive style with a long, sweeping underline.

Karen Creasy

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy